UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

EXIE MAI HARRINGTON, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 205 and TRUMEKO FOXX	)	
v.	)	NO. 3:13-1090 JUDGE CAMPBELL
WILLIAM EDWARD (BILL) HASLAM Governor of the State of Tennessee, JULIE MIX MCPEAK, Commissioner of the Tennessee Department of Commerce and Insurance, and ROBERT COOPER, Attorney General & Reporter of Tennessee	)	

TEMPORARY RESTRAINING ORDER

Pending before the Court is a Motion For A Temporary Restraining Order filed by the Plaintiff (Docket No. 2). The Defendants have filed a Response in Opposition (Docket No. 6) and Plaintiffs filed a Brief in Further Support (Docket No. 8). The Motion asks this Court, among other things, to issue a Temporary Restraining Order ("TRO") enjoining Defendants from implementing or enforcing against any Plaintiff or other similarly situated person certain clauses of Tennessee Department of Insurance and Commerce Rule 0780-01-55.02(6). (the "Rule").

The Court held a hearing on the Motion on October 7, 2013, which was attended by counsel for all parties.

For the reasons described below, the Motion is GRANTED on the terms and conditions stated herein.

In determining whether to issue a TRO pursuant to Rule 65 of the Federal Rules of Civil Procedure, the Court is to consider: (1) the plaintiff's likelihood of success on the merits; (2) whether the plaintiff may suffer irreparable harm absent the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of the injunction on the public interest. Abney v. Amgen, Inc., 443 F.3d 540, 546 (6th Cir. 2006).

Based on the Motion, briefs, pleadings, representations of counsel and the entire record, the Court finds:

(1) Plaintiffs have demonstrated a strong or substantial likelihood of success on the merits of their claims. Specifically, the Court finds that the Rule as applied to Plaintiffs is an unconstitutional prior restraint in violation of the First Amendment. The Rule serves a compelling government interest in preventing fraud. But it is not narrowly tailored or the least restrictive means of furthering the government's interest. U.S. v. Playboy Entertainment Corp., 529 U.S. 803, 813 (2000).

The Court finds that Plaintiffs have standing because the prior restraint is an injury in fact to their First Amendment rights. The Court also finds that abstention is not appropriate due to the important Federal questions implicated in this case: the First Amendment and the implementation of the Federal Patient Protection and Affordable Care Act.

(2) Plaintiffs have demonstrated that they will suffer immediate and irreparable injury, harm, loss, or damage if injunctive relief is not granted pending a preliminary injunction hearing. Specifically, the Court finds that the Rule's prior restraint on Plaintiffs' First Amendment rights is immediate and irreparable.

(3) The balance of relative harms among the parties weighs in favor of Plaintiffs against Defendants. A TRO will not harm the Defendants since they disclaim any interest in applying the Rule against Plaintiffs' intended speech.

(4) The public interest will not be harmed by injunctive relief pending a preliminary injunction hearing as Defendant has represented to the Court that the Rule is not intended to apply to Plaintiffs and their intended speech.

Under the circumstances of this case, no bond is required.

It is, therefore, ordered, pursuant to Federal Rule of Civil Procedure 65, that Defendants, their officers, agents, employees, servants, attorneys, and all persons in active concert or participation with them are hereby restrained and enjoined from applying Rule 0780-01-55-.02(6)(b) to the speech of Plaintiffs unless Plaintiffs are actually certified as Navigators or hold themselves out publicly as Navigators.

This Temporary Restraining Order shall expire at midnight on October 21, 2013. Any hearing on a motion for preliminary injunction will be set and heard by the trial judge, Chief Judge Haynes.

This Temporary Restraining Order is effective upon its issuance on October 7, 2013 at 4:00 p.m.

IT IS SO ORDERED.

Todd Campbell

TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE